Supreme Court, U.S.
FILED
APR 30 1986
JOSEPH F. SPANIOL, JR.
CLERK

(5)

No. 85-1033

In The
Supreme Court Of The United States

OCTOBER TERM, 1985

JOHN J. KELLY,
CONNECTICUT CHIEF STATE'S ATTORNEY, ET AL.,
Petitioners,

v.

CAROLYN ROBINSON,
Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOINT APPENDIX

CARL SCHUMAN
Assistant State's Attorney
Senior Appellate Attorney
Office of the Chief
State's Attorney
Connecticut Division of
Criminal Justice
P.O. Box 5000
340 Quinnipiac Street
Wallingford, Connecticut 06492
(203) 265-2373
Counsel of Record for the
Petitioners

FRANCIS X. DINEEN
New Haven Legal Assistance
Association
426 State Street
New Haven, CT 06510
(203) 777-4811
Counsel of Record for
Respondent

Petition for Certiorari—Filed December 13, 1985
Certiorari Granted—February 24, 1986

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KELLY v. ROBINSON, NO. 85-1033
DOCKET ENTRIES

1984

2/21	Complaint to determine dischargeability of debt
3/5	MEMORANDUM in opposition to request for ex parte injunction ca pending hearing filed by defendant
3/5	ANSWER & Special Defenses filed by Defendant
3/5	APPEARANCE of Carl Schuman for Director, Dept. of Adult Probation
3/13	DEBTORS' Memorandum in support of preliminary injunction
3/22	REQUEST for Production filed by Debtor
3/22	MOTION to reopen filed by Debtor
3/26	REQUEST for admissions filed by Debtor
3/26	AMENDED Complaint to determine dischargeability of debt
3/26	MOTION for preliminary injunction filed by Debtor—DENIED ca 4/3/84 (cc: Schuman; Dineen—4/4/84) ca
3/28	RESPONSE to request for Production filed by Defendant
3/28	PRETRIAL ORDER—Trial 5/18/84 at 10:00 (cc: Schuman; Reynolds; Dineen; Faulkner—4/2/84)
4/10	MOTION to separate claim for Attorneys fees and for purposes of trial filed by Joanne S. Faulkner—GRANTED 5/15/84 (cc: Faulkner; Schuman—5/15/84) ca
4/12	AMENDED CAPTION filed by Joanne S. Faulkner, Esq.
4/11	OBJECTION to Request for production filed by Edward Reynolds
4/11	OBJECTION to Request for Admissions filed by Edward Reynolds

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4/16	APPLICATION for leave to appeal interlocutory order to district court filed by Joann Faulkner, Esq.
4/16	MOTION for relief filed by Joann Faulkner
4/16	NOTICE OF APPEAL filed by Francis Dineen, Esq. copy of Notice of Appeal mailed to Carl Schuman, Esq., Director of Adult Probation Austin J. McGuigan, Chief State's Attorney on 4/17/84
4/16	PLAINTIFF'S Trial Brief
4/16	ANSWER to Motion for leave to appeal filed by Carl Schuman
4/11	OBJECTION TO AMENDED COMPLAINT to determine dischargeability filed by Edward Reynolds
4/18	NOTICE OF HEARING ON MOTION #4 — 5/15/84 — 11:30 a.m. cc: Atty. Faulkner s/inst.
4/18	NOTICE OF HEARING ON PLEADINGS #5, 6, & 10 — 5/15/84 — 11:30 a.m. cc: Atty. Reynolds w/inst.
4/16	DEFENDANTS' RESPONSE to Plaintiff's request for admissions filed Carl Schuman, Esq.
4/16	AMENDED ANSWER filed by Carl Schuman, Esq. for Defendant
4/16	CERTIFICATION OF SERVICE OF Summons and notice of Trial to E. Reynolds, Esq., filed by Nidia Torres
4/16	MEMORANDUM IN OPPOSITION to plaintiff's Motion for relief filed by Carl Schuman, Esq.
4/27	Trial Brief of Defendants Austin J. McGuigan, Chief State's Attorney, and Terry S. Capshaw, Director, Office of Adult Probation

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4/24	Motion for Relief filed by Frances Dineen, Esq.
4/30	CERTIFICATION of service of Notice of Hearing (?) to E. Reynolds, Esq. filed by Joanne S. Faulkner
4/30	COMMISSIONERS, DEPARTMENTS OF INCOME MAINTENANCE and Administrative services response to request for Admissions filed by Edward Reynolds, Esq.
4/30	ANSWER of the defendant Commissioners filed by Edward Reynolds, Esq. and certification thereof
4/30	DEFENDANT Commissioner of the Department of Income Maintenance and Administrative services of the State of Connecticut Trial Brief filed by Edward Reynolds, Esq.
5/2	WITHDRAWAL OF Motion for Relief filed by Francis Dineen, Esq.
5/3	MOTION FOR Voluntary dismissal of Application for leave to appeal and notice of Appeal filed by Francis Dineen, Esq.—GRANTED 5/14/84 (cc: Reynolds; Dineen; Schuman—5/14/84) ca
5/4	AMENDMENT TO ANSWER filed by Carl Schuman, Esq.
5/10	Plaintiff's Reply Brief
5/21	NOTICE of reas. trial on complaint—6/27/84 at 2:15 cc: Reynolds; Dineen; Schuman
5/30	MOTION for permission to amend answers of the defendant Commissioners of the department of income Maintenance and administrative services filed by Edward Reynolds, Esq.

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5/30		AMENDMENT TO ANSWER OF THE DEFENDANT COMMISSIONERS of the Departments of Income Maintenance and Administrative Services filed by Edward Reynolds
6/20		PLAINTIFF'S Supplemental Brief
8/31		MEMORANDUM OF FINDINGS, CONCLUSIONS OF LAW AND PROPOSED ORDER by Judge Shiff to Judge Daly
9/4		JUDGMENT and MEMORANDUM AND PROPOSED ORDER cc: Attys. Dineen; Faulkner; Reynolds and Schuman and Meister signed by Judge Daly
9/17	#11	NOTICE OF APPEAL filed by Joanne S. Faulkner, Esq.
9/19		COPY OF Notice of Appeal #11 mailed to Edward F. Reynolds on behalf of Commissioner, Department of Income Maintenance & Commissioner of Administrative Services Bureau of Collection services and to Carl Schuman, Assistant State's Attorney, on behalf of Austin J. McGuigan, Chief State's Attorney Division of Criminal Justice, Judicial Department and Director, office of Adult Probation on 9/19/84
9/20	#12	NOTICE OF Appeal by Agreement Directly to the Court of Appeals under 28 U.S.C. sec. 1293(b)
9/21		COPY of Receipt of $5.00 No. 3687238, copy of Notice of Appeal, Notice of Appeal by Agreement directly to the Court of Appeals under 28 U.S.C. sec. 1293(b) sent to the U.S. Court of Appeals for the Second Circuit and Docket Entries & Cover Letter
9/21	#13	DESIGNATION OF EXHIBITS filed by Francis Dineen, Esq. on behalf of Carolyn Robinson, Esq.

1984		
9/26	#14	DEFENDANT'S Motion for attorney's fees filed by Carl Schuman, Esq. on behalf of Director, Office of Adult Probation & Austin J. McGuigan, Esq.
9/26	#15	MEMORANDUM IN SUPPORT of Defendant's Motion #14 filed by Carl Schuman, Esq. on behalf of Austin J. McGuigan, Esq. & Director, Office of Adult Probation
10/5		RECORD ON APPEAL sent to Second Circuit Court & Cover Letter
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10/29		DECISION RENDERED by Second Circuit
11/26		DEFENDANTS'/APPELLEES' MOTION For Stay of Mandate Pending Application For Certiorari Granted by Second Circuit
12/13		PETITION For Writ of Certiorari Filed in United States Supreme Court
1986		
2/24		PETITION For Writ of Certiorari granted by United States Supreme Court

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

In Re:)

CAROLYN EVONNE ROBINSON)

Petitioner)

APPLICATION TO PAY FILING FEES IN INSTALLMENTS

1. Applicant is filing herewith a petition commencing a voluntary case under Title 11, United States Code.

2. She has no money with which to pay the fee in this matter.

3. She has not paid any money to her attorney for services rendered or to be rendered in connection with this case or any pending case under Title 11, United States Code.

4. She will pay the fee within three months.

WHEREFORE, applicant prays that she be permitted to pay this filing fee in installments.

/s/ Carolyn E. Robinson

CAROLYN EVONNE ROBINSON

DATED Jan. 21-81

UNITED STATES BANKRUPTCY COURT

DISTRICT OF CONNECTICUT

In re

CAROLYN EVONNE ROBINSIN
S.S. No. 049-46-5091

Debtor

VOLUNTARY CASE: DEBTOR'S PETITION

1. Petitioner's post-office address is 282 Terrace Avenue Apt. C2, West Haven, CT 06516.

2. Petitioner has resided within this district for the preceding 180 days.

3. Petitioner is qualified to file this petition and is entitled to the benefits to Title 11, United States Code, as a voluntary debtor.

WHEREFORE, petitioner prays for relief in accordance with Chapter 7 of Title 11, United States Code.

Signed: _____

JOANNE S. FAULKNER
Attorney for Petitioner
399 Temple Street
New Haven, Connecticut 06511
777-4811

I, Carolyn Evonne Robinson, the petitioner named in the foregoing petition, certify under penalty of perjury that the foregoing is true and correct. Executed on Jan. 21, 1981.

Signature: Carolyn E. Robinson

Carolyn Evonne Robinson

UNITED STATES BANKRUPTCY COURT

DISTRICT OF CONNECTICUT

IN RE:	)	
CAROLYN EVONNE ROBINSON	)	
	)	Case No.
	)	
Debtor	)	

STATEMENT OF ATTORNEY RE COMPENSATION

No compensation has been paid or promised to the undersigned by the debtor for services rendered or to be rendered in connection with this case.

The undersigned is a salaried employee of the New Haven Legal Assistance Association, Inc., and it is in that capacity that she is representing the debtor in this matter.

/s/ Joanne S. Faulker

JOANNE S. FAULKNER
Attorney for the Debtor
399 Temple Street
New Haven, Connecticut 06511
777-4811

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

ORDER FOR MEETING OF CREDITORS AND FIXING TIME FOR FILING OBJECTIONS TO DISCHARGE AND FOR FILING COMPLAINTS TO DISCHARGEABILITY OF CERTAIN DEBTS, COMBINED WITH NOTICE THEREOF AND OF AUTOMATIC STAY

To the following debtors, their creditors, and other parties in interest:

An order for relief under 11 U.S.C. Chapter 7 has been entered upon petitions filed by the following debtors, and Daniel Meister, 71 East Avenue, Norwalk, Conn. 06851 is appointed interim trustee in each case, to wit:

Pet. No.	Debtor	Pet. Filed	Time of Meeting of Creditors
	* * *		
	(Names omitted in printing.)		
5-81-114	Carolyn Evonne Robinson 282 Terrace Ave. Apt. C-2 West Haven, Conn. 06516	2/5/81	11:30 A.M.

DO NOT FILE CLAIMS AT THIS TIME. THE ABOVE-ENTITLED CASES HAVE BEEN DESIGNATED AS PROBABLE NO-ASSET CASES. YOU WILL BE NOTIFIED AT A LATER DATE OF THE TIME WITHIN WHICH TO FILE CLAIMS IF SUFFICIENT FUNDS ARE RECOVERED FOR PAYMENT OF DIVIDEND CREDITORS

IT IS ORDERED, and notice is hereby given, that:

1. Respective meetings of creditors of said debtors pursuant to 11 U.S.C. section 341(a) shall be held at ROOM 320, Bankruptcy Court, United States Court House, 915 Lafayette Boulevard, Bridgeport, CONNECTICUT on *March 17, 1981* at the times set forth above.

2. The debtors shall appear with their attorneys of record, in person, (*or, if the debtor is a partnership,* by a general partner, *or, if the debtor is a corporation,* by its president *or other executive officer*) at the meetings of creditors set forth above for the purpose of being examined.

3. *April 27, 1981* is fixed as the last day for the filing of objections to discharge of said debtors.

4. *April 27, 1981* is fixed as the last day for the filing of complaints to determine dischargeability of any debt pursuant to 11 U.S.C. section 523(c).

You are further notified that

The meeting may be continued or adjourned from time to time by notice at the meeting without further written notice to creditors.

At the meetings, the creditors may file their claims, (elect a trustee as permitted by law, designate a person to supervise the meeting, elect a committee of creditors), examine the debtor, and transact such other business as may properly come before the meeting.

As a result of the filing of the petition, certain acts and proceedings against the debtors and their property are stayed as provided in 11 U.S.C. section 362(a).

If no objection to the discharge of the debtors are filed on or before the last day fixed therefor as stated in subparagraph 3 above, the debtors will be granted their discharges. If no complaint to determine the dischargeability of a debt under clause (2), (4), or (6) of 11 U.S.C. section 523(a) is filed within the time fixed therefor as stated in subparagraph 4 above, the debt may be discharged.

It appears from the schedules of the debtors that there are no assets from which any dividend can be paid to creditors.

It is unnecessary for any creditor to file his claim at this time in order to share in any distribution from the estate. If it subsequently appears that there are assets from which a dividend may be paid, creditors will be so notified and given an opportunity to file their claims.

Unless the court extends the time, any objection to the debtors' claim of exempt property (Schedule B-4) must be filed within 15 days after the above date set for the meetings of creditors.

Dated: *February 20, 1981*

BY THE COURT

ROBERT L. KRECHEVSKY
Bankruptcy Judge

By: Ethel Petrides
DEPUTY IN CHARGE

*X ONLY THE DEBTOR WHOSE NAME IS MARKED ABOVE HAS LISTED YOU AS A CREDITOR

Bankruptcy Court
United States Court House
Room 319
915 Lafayette Boulevard
Bridgeport, Conn. 06604

United States Bankruptcy Court

For the _____ District of Connecticut

In re

CAROLYN EVONNE ROBINSON Case No. 5-81-114

Debtor*

DISCHARGE OF DEBTOR

It appearing that the person named above has filed a petition commencing a case under title 11, United States Code on February 5, 1981, that an order for relief was entered under chapter 7 and that no complaint objecting to the discharge of the debtor was filed within the time fixed by the court, it is ordered that

1. The above-named debtor is released from all dischargeable debts.

2. Any judgment heretofore or hereafter obtained in any court other than this court is null and void as a determination of the personal liability of the debtor with respect to any of the following:

(a) debts dischargeable under 11 U.S.C. § 523;

(b) unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clauses (2), (4) and (6) of 11 U.S.C. § 523(a);

(c) debts determined by this court to be discharged under 11 U.S.C. § 523.

3. All creditors whose debts are discharged by this order and all creditors whose judgments are declared null and void

by paragraph 2 above are enjoined from commencing, continuing or employing any action, process or act to collect, recover or offset any such debt as a personal liability of the debtor, or from property of the debtor, whether or not discharge of such debt is waived.

Dated: May 14, 1981

BY THE COURT

/s/ Alan H.W. Shiff

Bankruptcy Judge
Alan H.W. Shiff

IN THE
UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF CONNECTICUT

IN RE: CAROLYN ROBINSON, Debtor	
CAROLYN ROBINSON, Plaintiff	
V.	CASE NO. 5-81-114
DIRECTOR, DEPARTMENT OF ADULT PROBATION; DIRECTOR, DIVISION OF CRIMINAL JUSTICE, JUDICIAL DEPARTMENT; COMMISSIONER, DEPARTMENT OF INCOME MAINTENANCE; COMMISSIONER OF ADMINISTRATIVE SERVICES, BUREAU OF COLLECTION SERVICES, Defendants	ADV. NO. 84-63

AMENDED COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT

FIRST COUNT

1. This complaint is brought to determine the dischargeability of the plaintiff's restitution debt owing to the State of Connecticut, and for appropriate relief.

2. This court has jurisdiction pursuant to 11 U.S.C. sec. 105 and 28 U.S.C. secs. 1343 and 1471.

3. On February 5, 1981, plaintiff filed her petition in bankruptcy and was granted an order for relief pursuant to 11 U.S.C. sec. 362.

4. Duly scheduled in her petition was a debt to the State of Connecticut Department of Income Maintenance, and the Commission on Adult Probation. Notice was sent by the Court to each of these entities, in February, 1981.

5. Prior to the last date for filing a claim of dischargeability, no such claim was filed.

6. Plaintiff received her discharge in bankruptcy on May 14, 1981.

7. Plaintiff's debt to the state of Connecticut Department of Income Maintenance was thereby discouraged.

8. On May 20, 1981, plaintiff's attorney sent the letter attached hereto as Exhibit A, by certified mail, to the Office of Adult Probation, with a copy to Michael Arcari, Esquire, Assistant Attorney General.

9. The restitution debt arose out of Mrs. Robinson's conviction for wrongful receipt of Public Assistance benefits in the amount of $9,932.95 at a time when she was also receiving Social Security benefits.

10. On November 14, 1980, Judge Kinney imposed on Mrs. Robinson a sentence of not less than one year, nor more than three years, execution suspended and five years probation. A special condition of probation was imposed as follows: "restitution of $9,932.95 at $100 per month commencing 1-16-81."

11. On February 6, 1984, Mr. Benevento, of the Office of Adult Probation, informed plaintiff that her restitution debt was not dischargeable in bankruptcy, and she must begin to make restitution payments under threat of rearrest and incarceration for violation of probation.

12. On February 21, 1984, Mr. Benevento, Senior Probation Officer, and Leonard Russman, District Manager, sent Mrs. Robinson the letter attached hereto as Exhibit B.

13. By letter dated March 19, 1984, said individuals, on behalf of defendant, requested that plaintiff resume payments. A copy is annexed hereto as Exhibit C.

14. Mrs. Robinson, a widow, was greatly distressed by the threat of the Probation Department in view of her need to care for her minor children, and obtain the fresh start she had received in bankruptcy.

15. Plaintiff's attorney requested defendant Director of the Office of Adult Probation to withhold further action against Mrs. Robinson pending the decision in the case now before this court on the same issue. A copy of the letter is attached hereto as Exhibit D.

16. By letter dated February 10, 1984, defendant expressed his intention "to proceed with the collection of restitution." A copy of the letter is attached hereto as Exhibit E.

SECOND COUNT

1. The allegations of paras. 1–16 of the First Count are repeated and realleged as if fully set forth herein.

17. Defendant Director of the Office of Adult Probation has acted and threatened to act without ascertaining from this Court defendant's obligations in the fact of the automatic stay and discharge herein.

18. Defendant's acts or threatened acts are in violation of this Court's action discharging the debtor, and of 11 U.S.C. secs. 524 and 525.

THIRD COUNT

1. The allegations of paras. 1-18 of the Second Count are repeated and realleged as if fully set forth herein.

19. Said defendant's actual or threatened actions have deprived and are depriving plaintiff of her civil rights, privileges, or immunities under color of state law, in violation of 42 U.S.C. sec. 1983.

WHEREFORE, plaintiff claims an order declaring that the larceny and restitution debt herein is dischargeable and has been discharged; an order declaring that the debt to the defendant Department of Income Maintenance is dischargeable and has been discharged; and order enjoining the defendants from taking any steps, whether directly or indirectly, to obtain payment of the restitution or otherwise enforce the criminal judgment; an order assessing attorneys' fees and costs against defendant Director of the Office of Adult Probation pursuant to the equitable powers of this court, and pursuant to 42 U.S.C. sec. 1988; appropriate orders for contempt and violation of plaintiff's civil rights, including compensatory damages, punitive damages, and attorneys' fees payable to New Haven Legal Assistance Association; and such other and further relief as this Court deems just and equitable.

THE PLAINTIFF

BY: /s/ Joanne S. Faulkner

JOANNE S. FAULKNER
HER ATTORNEY
399 Temple Street
New Haven, CT 06511
777-4811

May 20, 1981

Office of Adult Probation
188 Bassett Street
New Haven, CT 06511

ATTENTION: Mr. Vincent Benevento

Re: Carolyn Robinson, Case No. CR6-185844
Bankruptcy No. 5-81-114

Dear Mr. Benevento:

As you are aware, Carolyn Robinson filed a petition in bankruptcy on February 5, 1981. She received her discharge on May 14, 1981.

Pursuant to 11 U.S.C. § 523(a)(7), the amount ordered paid to the State by way of restitution has been discharged in bankruptcy. The discharge voids the restitution order, since it is a determination of the personal liability of the debtor. 11 U.S.C. § 524.

The State is prohibited from discriminating against Ms. Robinson because of nonpayment of a debt which has been discharged in bankruptcy pursuant to 11 U.S.C. § 525.

Because of all of the above, I have advised Ms. Robinson that she need make no further payments under the restitution order. Upon discharge, there is no longer anything owing under the order for probation, and it is my position that the repayment conditions thereof have been fully satisfied.

If you disagree with the above, please let me know immediately. In the event of such disagreement, the State's recourse is to obtain a ruling from the Bankruptcy Court as to the dischargeability of the restitution order.

* * *

(Certified mail receipt omitted in printing.)

EXHIBIT A

Any other action will subject the State to serious and substantial liability.

Sincerely,

(Mrs.) Joanne S. Faulkner
Attorney at Law
Legal Aid Bureau

cc: Carolyn Robinson
JSF:ls/3/15

CONNECTICUT JUDICIAL DEPARTMENT
OFFICE OF ADULT PROBATION
DISTRICT IV

965 Dixwell Avenue, Hamden, Connecticut 06514

Office Telephone: (203) 789-7876
Centrex 153-7876

February 21, 1984

Ms. Carolyn Robinson
635 Fitch Street
Hamden, Conn. 06514

Dear Ms. Robinson:

On 11-14-80 you were sentenced in Superior Court, GA-6, New Haven, Connecticut after having plead guilty to Larceny 2nd. At that time, the Honorable Frank Kinney imposed a sentence of not less than 1 year, nor more than 3 years, execution suspended and 5 years probation. Special conditions of probation imposed as follows: "Restitution of $9,932.95 at $100 per month commencing 1-16-81."

We are aware of Bankruptcy Proceedings on your behalf; however, the policy of this office as indicated by the Director of the Connecticut Judicial Department Office of Adult Probation is as follows: "The Office of Adult Probation will adopt a position that the condition of probation concerning restitution is valid and not dischargeable. The probationer must know that we intend to enforce the court order to the fullest extent possible."

Acting under instructions of my District Manager, Leonard Russman, I am requesting that you resume monthly payments of $100 as ordered by the Superior Court on 11-14-80. We can discuss this further on your report date in March.

Payments had been received in a prompt and orderly fashion to 5-4-81 — last payment — total $450.00 which leaves a balance of $9,482.95.

Sincerely

/s/ Vincent J. Beneventc

Vincent J. Benevento
Senior Probation Officer

/s/ Leonard Russman

Leonard Russman
District Manager

VJB/1f

EXHIBIT B

CONNECTICUT JUDICIAL DEPARTMENT
OFFICE OF ADULT PROBATION
DISTRICT IV

965 Dixwell Avenue, Hamden, Connecticut 06514

Office Telephone: (203) 789-7876
Centrex 153-7876

March 19, 1984

Ms. Carolyn Robinson
635 Fitch Street
Hamden, Connecticut 06514

Dear Ms. Robinson:

As you have been informed, the policy of this Office as indicated by the Director of the Connecticut Judicial Department, Office of Adult Probation, is as follows: "The Office of Adult Probation will adopt a position that the condition of probation concerning restitution is valid and not dischargeable. The probationer must know that we intend to enforce the Court order to the fullest extent possible."

Acting under the instruction of my District Manager, Mr. Leonard Russman, I am requesting that you resume a payment of no less than one hundred dollars ($100.00) as of April 1, 1984. It is expected that a payment be paid by that date and thereafter on a monthly basis on or by the first day of each month. At this point, four hundred fifty dollars ($450.00) has been paid and an arrearage of three thousand four hundred fifty dollars ($3450.00) is due.

In the event that our order is ignored and no payment is made, you will be brought before the Court via a "Notice to Appear." We can discuss this further on your next reporting date.

Sincerely,

/s/ Vincent J. Benevento

Vincent J. Benevento
Senior Probation Officer

/s/ Leonard Russman

Leonard Russman
District Manager

VJB/olc

EXHIBIT C

399 TEMPLE STREET
NEW HAVEN, CONNECTICUT 06511-9990
TELEPHONE (203) 777-4811

February 6, 1984

Terry Capshaw, Director
Office of Adult Probation
643 Maple Avenue
Hartford, CT 06114

Dear Mr. Capshaw:

I respectfully request you to rescind your recent memo advising your staff that a restitution order is not dischargeable in bankruptcy, and directing vigorous enforcement of restitution debts in spite of bankruptcy.

The matter is presently being litigated in the Bankruptcy Court. The majority of cases under the 1979 Bankruptcy Code support the dischargeability of such a debt. Your Department's brief relies principally on pre-code cases, and ignores the specific, new, provisions of 11 U.S.C. § 523.

Accordingly, it seems premature for you to make a determination which may turn out to be wrong. If it is wrong, you may well be subjecting yourself and your staff to penalties for contempt of court, including recompense for the litigation caused by the need to apply to the Bankruptcy Court for protection. Your attorney should talk to Assistant Attorney General Les McCallum, who has had recent experience in this regard.

Please let me have your response by February 15, 1984, so I will know how to proceed.

Sincerely,

/s/ Joanne S. Faulkner (nt)
Joanne S. Faulkner
Attorney at Law

JSF:nt
CERTIFIED RETURN
RECEIPT REQUESTED
cc: Vincent Benevento
Carl Schuman
Carolyn Robinson

EXHIBIT D

CONNECTICUT JUDICIAL DEPARTMENT
OFFICE OF ADULT PROBATION
ADMINISTRATIVE OFFICE

643 Maple Avenue, Hartford, Connecticut 06114

Telephone: (203) 566-8350

February 10, 1984

Ms. Joanne S. Faulkner
Attorney at Law
New Haven Legal Assistance Assoc., Inc.
399 Temple Street
New Haven, CT 06511-9990

Dear Ms. Faulkner:

Your letter of February 6, 1984 has been discussed with the attorney from the Chief State's Attorney's Office who is representing us in these matters concerning the dischargeability of restitution orders in bankruptcy.

Mr. Schuman has indicated that he will talk to Les McCallum and will then submit something to you in writing on the subject of their conversation. In the meantime, we intend to proceed with the collection of restitution in the cases which thus far have been brought to our attention.

Very truly yours,

/s/ Terry S. Capshaw
Terry S. Capshaw
Director

TSC:t

EXHIBIT E

UNITED STATES BANKRUPTCY COURT

DISTRICT OF CONNECTICUT

IN RE CAROLYN ROBINSON	:	NO. 5-81-114
CAROLYN ROBINSON	:	ADV. NO.
V.		
DIRECTOR, OFFICE OF ADULT PROBATION, ET AL.	:	APRIL 12, 1984

AMENDED ANSWER

1. Admitted, except as to words "debt" and "appropriate," which are denied.

2. Denied.

3. Admitted.

4. Denied as to first sentence. Admitted as to second sentence.

5. Admitted.

6. Admitted.

7. Denied.

8. Admitted.

9. Admitted except as to word "debt," which is denied.

10. Admitted.

11. Denied.

12. Admitted.

13. Admitted.

14. No knowledge or information.

15. Admitted.

16. Admitted.

17. Denied.

18. Denied.

19. Denied.

AFFIRMATIVE DEFENSE

Any claim for reimbursement from the state is barred by the eleventh amendment to the federal constitution.

RESPECTFULLY SUBMITTED,

DIRECTOR, OFFICE OF ADULT PROBATION

DIVISION OF CRIMINAL JUSTICE

DEFENDANTS

By /s/ Carl Schuman
CARL SCHUMAN
Assistant State's Attorney
Appellate Unit
Office of the Chief State's Attorney

* * *

(Certification omitted in printing.)

UNITED STATES BANKRUPTCY COURT

DISTRICT OF CONNECTICUT

In Re: CAROLYN ROBINSON, DEBTOR,	
	Case No. 5-81-00114
	Adversary No. 5-84-0063
CAROLYN ROBINSON, PLAINTIFF,	
vs.	
DIRECTOR, DEPARTMENT OF ADULT PROBATION, ET ALS., DEFENDANTS.	April 27, 1984

ANSWER OF THE DEFENDANT COMMISSIONERS

1. Admitted, except as to words "debt" and "appropriate," which are denied.

2. Denied.

3. Admitted.

4. Denied as to first sentence. Admitted as to second sentence.

5. Admitted.

6. Admitted.

7. Denied.

8. Admitted.

9. Admitted except as to word "debt," which is denied.

10. Admitted.

11. Denied.

12. Admitted.

13. Admitted.

14. No knowledge or information.

15. Admitted.

16. Admitted.

17. Denied.

18. Denied.

19. Denied.

FIRST AFFIRMATIVE DEFENSE

Any claim for reimbursement from the state is barred by the eleventh amendment to the federal constitution.

SECOND AFFIRMATIVE DEFENSE

The plaintiffs have alleged no claim against the defendant Commissioners of the Department of Income Maintenance and Administrative Services upon which relief can be granted.

THE DEFENDANTS, COMMISSIONERS OF
INCOME MAINTENANCE AND
ADMINISTRATIVE SERVICES

BY THEIR ATTORNEY
JOSEPH I. LIEBERMAN
ATTORNEY GENERAL

By: /s/ Edward F. Reynolds, Jr.

EDWARD F. REYNOLDS, JR.
ASSISTANT ATTORNEY GENERAL

90 Brainard Road
Hartford, CT. 06114
Telephone: 566-7014

IN THE
UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF CONNECTICUT

IN RE: CAROLYN ROBINSON, Debtor	
CAROLYN ROBINSON, Plaintiff	
V.	CASE NO. 5-81-114
DIRECTOR, DEPARTMENT OF ADULT PROBATION; DIRECTOR, DIVISION OF CRIMINAL JUSTICE, JUDICIAL DEPARTMENT; COMMISSIONER, DEPARTMENT OF INCOME MAINTENANCE; COMMISSIONER OF ADMINISTRATIVE SERVICES, BUREAU OF COLLECTION SERVICES, Defendants	ADV. NO.

REQUEST FOR ADMISSIONS

Plaintiff requests the defendant to admit the following, pursuant to Bankruptcy Rules 7036 and 9011:

1. On February 5, 1981, plaintiff filed her petition in bankruptcy and was granted an order for relief pursuant to 11 U.S.C. sec. 362.

2. Duly scheduled in her petition was a debt to the State of Connecticut Department of Income Maintenance, and the

Adult Probation Department. Notice was sent by the Court to each of these entities, in February, 1981.

3. Prior to the last date for filing a claim of dischargeability, no such claim was filed.

4. Plaintiff received her discharge in bankruptcy on May 14, 1981.

5. Plaintiff's debt to the state of Connecticut Department of Income Maintenance was thereby discharged.

6. On May 20, 1981, plaintiff's attorney sent the letter attached hereto as Exhibit A, by certified mail, to the Office of Adult Probation, with a copy to Michael Arcari, Esquire, Assistant Attorney General.

7. The restitution debt arose out of Mrs. Robinson's conviction for wrongful receipt of Public Assistance benefits in the amount of $9,932.95 at a time when she was also receiving Social Security benefits.

8. On November 14, 1980, Judge Kinney imposed on Mrs. Robinson a sentence of not less than one year, nor more than three years, execution suspended and five years probation. A special condition of probation was imposed as follows: "restitution of $9,932.95 at $100 per month commencing 1-16-81."

9. On February 6, 1984, Mr. Benevento, of the Office of Adult Probation, informed plaintiff that her restitution debt was not dischargeable in bankruptcy, and she must begin to make restitution payments under threat of rearrest and incarceration for violation of probation.

10. On February 21, 1984, Mr. Benevento, Senior Probation Officer, and Leonard Russman, District Manager, sent Mrs. Robinson the letter attached hereto as Exhibit B.

11. By letter dated March 19, 1984, said individuals, on behalf of defendant, requested that plaintiff resume payments. A copy of annexed hereto as Exhibit C.

12. Mrs. Robinson, a widow, was greatly distressed by the threat of the Probation Department in view of her need to care for her minor children, and obtain the fresh start she had received in bankruptcy.

13. Plaintiff's attorney requested defendant Director of the Office of Adult Probation to withhold further action against Mrs. Robinson pending the decision in the case now before this court on the same issue. A copy of the letter is attached hereto as Exhibit D.

14. By letter dated February 10, 1984, defendant expressed his intention "to proceed with the collection of restitution." A copy of the letter is attached hereto as Exhibit E.

THE PLAINTIFF

BY: /s/ Joanne S. Faulkner

JOANNE S. FAULKNER
HER ATTORNEY
399 Temple Street
New Haven, CT 06511
777-4811

* * *

(Certification omitted in printing.)

UNITED STATES BANKRUPTCY COURT

DISTRICT OF CONNECTICUT

IN RE CAROLYN ROBINSON	:	NO. 5-81-114
CAROLYN ROBINSON	:	ADV. NO.
V.		
DIRECTOR, OFFICE OF ADULT PROBATION, ET AL.	:	APRIL 12, 1984

DEFENDANTS' RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSIONS

The defendants respond to the request for admissions as follows:

Paragraph 1) Admitted.

2) Denied as to first sentence. Admitted as to second sentence.

3) Admitted.

4) Admitted.

5) Denied.

6) Admitted.

7) Admitted except as to word "debt," which is denied.

8) Admitted.

9) Denied.

10) Admitted.

11) Admitted.

12) Paragraph 12 cannot be admitted or denied because the defendants are not in possession of sufficient facts and cannot reasonably obtain such facts upon reasonable inquiry which would enable the defendants to admit or deny such request; moreover said request is objected to on the grounds that such requested admission is wholly immaterial and irrelevant to the pending adtion.

13) Admitted.

14) Admitted.

RESPECTFULLY SUBMITTED,

DIRECTOR, OFFICE OF ADULT PROBATION

DIVISION OF CRIMINAL JUSTICE

DEFENDANTS

By /s/ Carl Schuman
CARL SCHUMAN
Assistant State's Attorney
Appellate Unit
Office of the Chief State's Attorney

* * *

(Certification omitted in printing.)

UNITED STATES BANKRUPTCY COURT

DISTRICT OF CONNECTICUT

In Re: CAROLYN ROBINSON, DEBTOR,	
	Case No. 5-81-114
	Adv. No. 5-84-0063
CAROLYN ROBINSON, PLAINTIFF,	
vs.	
DIRECTOR, DEPARTMENT OF ADULT PROBATION, ET ALS., DEFENDANTS.	April 27, 1984

COMMISSIONERS, DEPARTMENTS OF INCOME MAINTENANCE AND ADMINISTRATIVE SERVICES RESPONSE TO REQUEST FOR ADMISSION

The defendants respond to the request for admissions as follows:

1. Paragraph 1, admitted.

2. Paragraph 2, denied as to first sentence. Admitted as to the second sentence.

3. Paragraph 3, admitted.

4. Paragraph 4, admitted.

5. Paragraph 5, denied.

6. Paragraph 6, admitted.

7. Paragraph 7, admitted except as to word "debt," which is denied.

8. Paragraph 8, admitted.

9. Paragraph 9, denied.

10. Paragraph 10, admitted.

11. Paragraph 11, admitted.

12. Paragraph 12 cannot be admitted or denied because the defendants are not in possession of sufficient facts and cannot reasonably obtain such facts upon reasonable inquiry which would enable the defendants to admit or deny such request; moreover said request is objected to on the grounds that such requested admission is wholly immaterial and irrelevant to the pending action.

13. Paragraph 13, admitted.

14. Paragraph 14, admitted.

THE COMMISSIONERS, DEPARTMENT OF INCOME MAINTENANCE and ADMINISTRATIVE SERVICES

BY THEIR ATTORNEY
JOSEPH I. LIEBERMAN
ATTORNEY GENERAL

By: /s/ Edward F. Reynolds, Jr.

EDWARD F. REYNOLDS, JR.
ASSISTANT ATTORNEY GENERAL

90 Brainard Road
Hartford, CT. 06114
Telephone: 566-7014

* * *

(Certification omitted in printing.)

IN THE
UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF CONNECTICUT

IN RE: CAROLYN ROBINSON, Debtor	
CAROLYN ROBINSON, Plaintiff	
V.	CASE NO. 5-81-114
DIRECTOR, DEPARTMENT OF ADULT PROBATION; and DIRECTOR, DIVISION OF CRIMINAL JUSTICE OF THE JUDICIAL DEPARTMENT; Defendants	

MOTION FOR PRELIMINARY INJUNCTION

Plaintiff requests this Court to issue preliminary injunction restraining defendant Director of the Department of Adult Probation and his staff from taking any steps to request or enforce payment, revoke probation, or report a violation of probation herein, pending a determination of the dischargeability issues herein.

For cause, plaintiff alleges that:

1. Since being served with process in *in re Pellegrino*, Case No. 5-83-361, Adv. No. 5-83-554, defendant Director of the Department of Adult Probation has issued an order which has resulted in plaintiff, who is not paying her restitution

debts because of her bankruptcy discharge, being told that the Department had determined that her debt is not dischargeable, and that payments must be made under penalties of arrest or revocation of probation.

2. By reason of the specific provisions of 22 U.S.C. sec. 523(a)(4) and (7), and sec. 523(c), there is reasonable likelihood that plaintiff may prevail herein.

3. Defendant will merely be delayed in receiving payment if the Department's position is correct.

4. If the Department's position is incorrect, the plaintiff may suffer distress, expense, imprisonment, and similar hardships to herself and her family if the injunction herein is not granted.

WHEREFORE, plaintiff requests relief.

THE PLAINTIFF

BY: /s/ Francis X. Dineen

JOANNE S. FAULKNER
FRANCIS X. DINEEN
HER ATTORNEYS
399 Temple Street
New Haven, CT 06511
777-4811

ORDER

Motion for Preliminary Injunction is Denied. Dated at Bridgeport, this 3rd day of April, 1984.

/s/ Alan H.W. Shiff

Alan H.W. Shiff, Bankruptcy Judge

STATE OF CONNECTICUT
SUPERIOR COURT

NOTICE TO APPEAR AND COMPLAINT– VIOLATION OF PROBATION OR CONDITIONAL DISCHARGE
JD-AP-46 New 4-82
Gen. Stat. 53a-32, Pr. Bk. 943

DOCKET NO. IS CR-6-185844

* * *

(Instructions omitted in printing.)

NAME AND ADDRESS OF DEFENDANT: Carolyn Robinson, 635 Fitch St., Hamden, CT

* * *

(NOTICE TO DEFENDANT omitted in printing.)

COMPLAINT:

The undersigned officer complains and alleges to the above-named court that on or about: 5-4-81 to 4-1-84 at Hamden, Connecticut the above-named defendant did violate the terms and conditions of his/her probation/conditional discharge in violation of General Statute 53a-30 in that:

On 11/14/80, the offender was sentenced in Superior Court, G.A.6, New Haven, for the crime of Larceny 2nd by Fraud, 2 counts and did receive a sentence of NLT 1 year NMT 3 years execution suspended and 5 years probation. Special Condition: "Restitution in the amount of $9,932.00 at the rate of $100.00 per month commencing 1/16/81." As of 4/1/84, Ms. Robinson had paid $450.00. The balance was $9,482.95. Last payment was 5/4/81. Carolyn Robinson was making restitution on a regular basis and was in satisfactory status.

Ms. Robinson filed bankruptcy with the United States Bankruptsy [sic] Court and on 5/14/81, was discharged as a debtor. Since that time, Ms. Robinson had made no further payment.

In March of 1984, Ms. Robinson did receive a letter from the Office of Adult Probation informing Ms. Robinson that the policy of this office as indicated by the Director of the Judicial Department Office of Adult Probation is as follows: "The Office of Adult Probation will adopt a position that the condition of probation concerning restitution is valid and not dischargeable. Ms. Robinson was also informed at that time that an arrearage of $3,450.00 was due.

On April 2, 1984, the offender did report to the Office of Adult Probation with payment in the amount of $100.00. It should be noted that the offender has abided by all agency imposed conditions of probation excluding the special condition and that the offender has remained in satisfactory status throughout the duration of the probation. To date, the offender has paid $550.00 and at this point, an arrearage of $3,350.00 remains. It is suggested that an appropriate schedule be arranged on a monthly basis in order to pay this amount by 11/14/85 which is the date that this probationary period expires.

To date, the total balance due at this point is $9,382.95.

Dated at Hamden on 4/12/84. /s/ Vincent J. Benevento

Vincent J. Benevento
Sr. Probation Officer

NOTICE:

You, the above-named defendant, are hereby notified to appear before the Superior Court at:

New Haven Superior Court, G.A. 6
121 Elm St., New Haven, CT

Court Appearance Date and Time: 4-27-84, 10:00 A.M.

then and there to answer to the charge of Violation of Probation/Conditional Discharge.

Dated at New Haven on April 13, 1984

Signed

[signature illegible]

Judge of the Superior Court

* * *

(FOR COURT USE ONLY omitted in printing.)

CERTIFICATION OF PERSONAL SERVICE:

I hereby certify that I served the foregoing notice to appear and complaint by personally delivering a copy to the above-named defendant:

On 4-16-84 at 12:00 P.M.

Signed: Vincent J. Benevento
Senior Probation Officer

NO. CR6-185844

STATE OF CONNECTICUT : SUPERIOR COURT

V. : G.A. #6, AT NEW HAVEN

CAROLYN ROBINSON : APRIL 25, 1984

MOTION FOR STAY

The defendant, Carolyn Robinson, moves for a stay of proceedings in this Court with regard to the complaint of Violation of Probation filed against her, and in support of her motion she represents the following:

1. On February 5, 1981, the defendant, Carolyn Robinson, filed her Chapter 7 petition for relief in bankruptcy in the U.S. Bankruptcy Court for the District of Connecticut, Case No. 5-81-114, and was granted an order for relief pursuant to 11 U.S.C. §§ 301 and 362.

2. Duly scheduled in her petition and schedules was her debt to the State of Connecticut Department of Income Maintenance, and the Office of Adult Probation. Notice was sent by the U.S. Bankruptcy Court to each of these entities on February 20, 1981.

3. Prior to the last date for filing a complaint to determine dischargeability of a debt, pursuant to 11 U.S.C. § 523(c), no such complaint was filed.

4. The defendant received her Discharge in Bankruptcy on May 14, 1981.

5. The defendant's debt to the State of Connecticut Department of Income Maintenance, and the Office of Adult Probation, was discharged by her Discharge in Bankruptcy. Pursuant to 11 U.S.C. § 524, the Discharge voids any judgment at any time obtained, to the extent that such judgment

is a determination of the personal liability of the debtor with respect to any debt discharged under 11 U.S.C. § 727, and further operates as an injunction against the continuation of an action, the employment of process, or any act, to collect, recover or offset any such debt as a personal liability of the debtor.

6. The defendant has already filed and served a Complaint to Determine Dischargeability of Debt in order to obtain a judicial determination that the restitution debt, involved in this instant Superior Court probation complaint, was discharged in defendant's bankruptcy. Said complaint is pending before the U.S. Bankruptcy Court, Adversary No. 205-5-84-0063, and a trial date has been set for May 18, 1984. The State of Connecticut is a party in said action in the Bankruptcy Court, and the defendant is seeking both declaratory and injunctive relief therein.

7. In view of the fact that the issues presently being litigated in the U.S. Bankruptcy Court will be determinative of all or some of the issues involved in this instant Superior Court probation complaint, the defendant is requesting that this instant matter be stayed until there is a final decision, including a final decision on any appeals that may be taken by either party, rendered on the defendant's Complaint pending in the Bankruptcy Court.

8. The defendant recognizes that, pursuant to Conn. Gen. Stat. § 53a-31(b), the period of her sentence of probation is interrupted from the date of the issuance of the Notice to Appear (April 16, 1984) through the entire period of the stay until a final determination as to the alleged violation of probation has been made by this Court.

THE DEFENDANT, CAROLYN ROBINSON

BY: _____

FRANCIS X. DINEEN
HER ATTORNEY
399 Temple Street
New Haven, CT 06511
777-4811

ORDER

The foregoing motion having been duly presented to this Court, it is hereby

ORDERED: that the proceedings in this Complaint of Violation of Probation be and hereby are stayed pending the final determination, including the final determination of any appeals that may be taken by any party, of the defendant's Complaint, Adv. No. 205-5-84-0063, presently pending in the U.S. Bankruptcy Court. Pursuant to Conn. Gen. Stat. § 53a-31(b), the period of the defendant's sentence of probation is interrupted during the period of this stay of proceedings until a final determination of the alleged violation of probation has been made by this Court.

Sherman Drutman, J.

JUDGE OF THE SUPERIOR COURT

* * *

(Certification omitted in printing.)